

## **REMARKS**

Claims 17-27 and 33-44 are pending in this application. According to the Office Action Summary, claims 23-27 and 41-44 stand allowed, claims 17-22, 33-37, 39 and 40 stand rejected, and claim 38 is objected to. However, there is an inconsistency between this Summary and the Detailed Action, which contains specific rejections only of claims 17, 21, 22, 37, 39 and 40, but does not describe any rejections of claims 18, 19, and 33-36. Accordingly, unless the next communication from the Office is a Notice of Allowance, it is respectfully requested that the status of claims 18, 19 and 33-36 be clarified.

Claim 17 stands provisionally rejected for obviousness-type double patenting as being unpatentable over claim 23 of copending Application Serial No. 10/708,121. The present application is assigned to E Ink Corporation, of 733 Concord Avenue, Cambridge MA 02138-1002 by an assignment recorded at Reel 16213, Frames 462-471. Application Serial No. 10/708,121 is assigned to the same corporation by an assignment recorded at Reel 14999, Frames 422-431. Accordingly, the present application and Application Serial No. 10/708,12 are commonly owned. There is filed herewith a Terminal Disclaimer disclaiming any portion of the term of any patent granted on this application which extends beyond the term of any patent granted upon Application Serial No. 10/708,121. As noted in the Office Action, this Terminal Disclaimer must be sufficient to overcome the double patenting rejection.

Claims 21, 22, 37, 39 and 40 stand rejected under 35 USC 102(e) as anticipated by Webber et al., U.S. Patent Publication No. 2004/0252360. This rejection is traversed. More specifically, this rejection is traversed on the grounds that Webber is not available as a 35 USC 102(e) reference against the present application.

The present application was filed September 2, 2003 and hence is entitled to at least this date for purposes of 35 USC 102(e) (although, of course, applicants reserve to right to demonstrate, should it be necessary to do so, that this application is entitled to an earlier date). Webber was filed only on February 10, 2004, after the filing

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date of the present application. Although Webber is a continuation-in-part of Application Serial No. 10/064,389, filed July 9, 2002, this parent application does not contain the crucial Figure 2 and related description of Webber, as may readily be seen by referring to U.S. Patent Publication No. 2003/0025855 (already of record in this case), the published form of Application Serial No. 10/064,389. Accordingly, Figure 2 and the related description of Webber are not entitled to a 35 USC 102(e) date earlier than February 10, 2004, and Webber is not available as a basis for a 35 USC 102(e) rejection using such material. It is believed to be self-evident that without Figure 2 and the related description, Webber does not furnish a basis for a 35 USC 102(e) rejection. Incidentally, it is respectfully noted that Paragraph 26 of Webber refers explicitly to the present application in a manner which should make it clear that the present application is the earlier disclosure of the "double release film" which forms the subject of all the present claims.

Claim 38 stands objected to as being dependent upon a rejected base claim but allowable if rewritten in independent form. Since claim 38 depends from claim 37, and the sole rejection of claim 37, the 35 USC 102(e) rejection, has been shown above to be unsound, claim 38 is allowable for the same reasons as claim 37.

Reconsideration and allowance of all claims in this application is respectfully requested.

Since the normal period for responding to the Office Action expired April 26, a Petition for a one month extension of this period is filed herewith.

Respectfully submitted  
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